IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.737 of 2010

1.The Superintending Engineer
Tamil Nadu Electricity Board,
Cuddalore Distribution Circle,
Cuddalore.
2.The Superintending Engineer,
Tamil Nadu Electricity Board,
General Construction Circle,
Tiruchirapalli ... Appellants

Vs

1.D.Jayabal Padayachi
2.G.M.Abdul Basudeen ... Respondents

This appeal is filed under Section 96 of C.P.C. r/w Order 41 Rule 1 C.P.C. against the judgement and decree dated 30.04.2009 made in O.S.No.10 of 2003 on the file of the Additional District Court, (Fast Track Court No.2) Cuddalore.

For Appellants : Mr.S.R.Shanmugadass
For Respondents : Mr.R.Gururaj for R1
Ms.Jayachitra for R2

J U D G E M E N T

The defendants in O.S.No.10 of 2003 on the file of the Additional District Court (FTC-II), Cuddalore are the appellants. The said suit was filed by the

1st respondent/plaintiff claiming damages for the loss of about 2500/- Casurina trees, valued at Rs.3,75,000/-.

2. According to the plaintiff, he had taken the suit land on lease about 15 years ago from the 3rd respondent/3rd defendant. During March 1995, while drawing the High Tension line across the land, the officials of the appellant Board had cut and removed 2500 Casurina trees. Though the Board agreed to pay compensation initially, it later refused. Hence, the suit came to be filed claiming a sum of Rs.3,75,000/- towards the value of the Casurina trees and Rs.1,25,000/- (In all Rs.5,00,000/-) as compensation for the inability to cultivate 35 cents of land which according to him cannot be cultivated.

3. The 2nd defendant filed a written statement contending that the suit is not maintainable and the Civil Court cannot entertain such a suit, since the plaintiff is a tenant and he cannot claim compensation and it is for the land owner to claim compensation. Cutting and removing of trees was done under the statutory power vested under the Electricity Act. The compensation would have to be determined by the Tahsildar or by the authorised officials. On the above contentions, the defendants sought for dismissal of the suit. The land owner filed a separate written statement claiming that he is entitled to 2/3 share of the compensation. However he has not filed any counter claim.

4. On the above pleadings, the learned Additional District Judge (Fast Track Court No.2) Cuddalore, framed the following issues:

1) Whether the 1st defendant is necessary and proper party to the suit?

2)Whether the plaintiff is entitled to maintain the suit?

3)Whether the Civil Court has got jurisdiction to decide the question of compensation?

4)Whether the claim of the defendants 1 and 2 for compensation is pending before the Revenue Court for determination of compensation is true?

5)Whether the relief as prayed for in the suit is without any basis?

6)To what other relief is the plaintiff is entitled to?

5. On the side of the plaintiff he has examined his son as PW1 and Exs. A1 to A9 were marked. On the side of the defendants, 2nd defendant was examined as DW1 and 3rd defendant was examined as DW2. No documentary evidence was produced on the side of the defendants.

6. The learned Trial Judge, relying upon the decision of this Court in ***South Madras Electricity Supply vs. T.L.Jaganatha Aiyar and others*** reported in ***1959(2)MLJ 446*** and the judgement of the Hon'ble Supreme Court reported in 1997 (1) SCC 68 held that the Civil Court will have jurisdiction to decide the question of compensation, when the obstructions are removed without notice. It has also been held by the Trial Court that the 1st defendant is a necessary party

to the suit, since he happens to be an Officer in charge of the Electricity Board. On the pendency of the proceedings for determination of compensation before the Revenue Officials, the Trial Court held that the defendants have not taken any proceedings for determination of compensation by the Revenue Officials. On the quantum of compensation, the learned Trial Judge concluded that the plaintiff is entitled to a sum of Rs.1,00,000/- towards the value of the trees at Rs.40/- per tree and for the land being rendered un-cultivable, the plaintiff would be entitled to Rs.50,000/- as compensation. In all, the learned Trial Judge granted Rs.1,50,000/- as compensation.

7. As regards the claim of the 3rd defendant, the learned Trial Judge rejected his claim holding that the 3rd defendant has not filed any counter claim and he cannot seek share in the compensation.

8. Aggrieved by the judgement and decree, the defendants 1 and 2 have come forward with this appeal.

9. I have heard S.R.Shanmugadass, learned counsel for the appellants and Mr.R.Gururaj, the learned counsel appearing for the 1st respondent and Ms.Jayachitra, the learned counsel appearing for the 2nd respondent.

10. The following points arise for determination in this appeal:

1) Whether the Trial Court is right in holding that the suit is

maintainable?

2) What is the amount of compensation for the value of the trees?

3) Whether the Trial Court is justified in granting a sum of Rs.50,000/- for the land being rendered unfit for cultivation?

It is the claim of the plaintiff that no notice was issued to him before cutting the trees and removing them. In the written statement, the defendants pleaded that notice was not issued, since the plaintiff was not available at the time of cutting and removing the trees.

11. The learned Trial Judge held that the suit is maintainable relying upon the judgement of this Court in ***South Madras Electricity Supply vs. T.L.Jaganatha Aiyar and others*** reported in ***1959(2)MLJ 446*** and the judgement of the Hon'ble Supreme Court reported in 1997 (1) SCC 68. Once it is found that the appellants have not followed the procedure prescribed under the Electricity Act before cutting and removing the trees, the bar of the suit cannot be presumed. Therefore, the learned Trial Judge was justified in holding that the suit is maintainable. On the valuation of the trees, though the plaintiff would claim a sum of Rs.3,75,000/- contending that each tree is of the value Rs.150/-, the Trial Court has come to the conclusion that the compensation for value of the trees is Rs.1,00,000/-.

12. In my considered opinion, the compensation arrived at by the Trial Court is just and reasonable. The plaintiff has accepted the said award of Rs.1,00,000/- and has not filed any appeal. The learned counsel for the appellants is unable to point out any serious error in the method adopted by the Trial Court for arriving at the compensation of Rs.1,00,000/-. Therefore, I find no reason to interfere with the said finding of the Trial Court in awarding compensation of Rs.1,00,000/- towards the value of the trees cut and removed.

13. The learned Standing counsel appearing for the Electricity Board would contend that the award of Rs.50,000/- on the ground that the land being rendered unfit for cultivation is unreasonable. According to him over head transmission line is 30 feet from the ground level and any crop except Casurina and bamboo could be cultivated in the said land. Therefore, according to the learned counsel, the decision of Trial Court that the land is rendered unfit for cultivation of any crop is not sustainable. In such circumstances, the award of Rs.50,000/- on that head is not just and proper.

14. Per contra, the learned counsel appearing for the 1st respondent/ plaintiff would contend that the area in which the land is situated being a coastal zone fit only for growing Casurina and no other crop can be grown. It is not in dispute that Casurina crops cannot be cultivated in the 35 cents of land.

Therefore, the right of cultivation of proper crop has been denied by the act of the appellants. It is not as if the 1st respondent has not suffered any damage. He is the lessee and he could cultivate in the said land during the remaining period of lease. There is nothing on record to suggest that the lease was terminated. At least till the disposal of the suit, the plaintiff has been prevented from cultivating the cash corp in the said land. Therefore, there is an element of loss and the compensation fixed Rs.50,000/- for the land of an extent of 35 cents being rendered unfit for cultivation is reasonable. The plaintiff could have cultivated at least twice in between 1995 to 2009. Therefore, he would have earned a sum of Rs.2,00,000/- by cultivating Casurina in 35 cents of land during the past 10 years.

15. However, the learned Trial Judge awarded a sum of Rs.50,000/- towards compensation and therefore, the award of Rs.50,000/- for the land being rendered unfit for carrying on cultivation is reasonable. The learned counsel for the second respondent would contend that he is the owner of the land and has claimed 2/3 share in the compensation, as the lessee had agreed to pay 2/3 of the income from the land. The Trial Court has rejected the claim on the ground that he has not paid any court fee and filed any counter claim for compensation.

16. The learned counsel for the 1st respondent would submit that the 2nd defendant had in fact filed a separate suit and the same came to be

dismissed. Be that as it may be, I do not propose to enter into the said controversy. As rightly pointed out by the Trial Court, the 2nd respondent has not chosen to pay court fee and claim his share before the Trial Court. Hence, the appeal is dismissed confirming the judgement and decree dated 30.04.2009 made in O.S.No.10 of 2003 on the file of the Additional District Court, (Fast Track Court No.2) Cuddalore. However, there shall be no order as to costs in this appeal. Consequently the connected miscellaneous petition is closed.

28.02.2017

Internet : Yes
Index : Yes
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To

The Additional District Court, (Fast Track Court No.2) Cuddalore.

R.SUBRAMANIAN,J

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